Bundesnetzagentur

- Ruling Chamber 7 -

Decision

Ref: BK7-22-052

In the administrative proceedings

concerning the approval of the methodology for the design of the neutrality charge pursuant to section 35e EnWG

of Trading Hub Europe GmbH, Kaiserswerther Straße 115, 40880 Ratingen, legally represented by its management board,

applicant,

Ruling Chamber 7 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn, legally represented by its President Klaus Müller,

its Vice Chair acting as Chair	Diana Harlinghausen,
its Vice Chair	Dr Antje Peters
and its Vice Chair	Dr Werner Schaller

decided on 29 July 2022:

1. the applicant's concept for the methodology for the design of the neutrality charge pursuant to section 35a EnWG (version of 28 June 2022, annex to this decision, page 1 et seq) is approved up to and including 31 March 2025.

2. The right to order payment of costs is reserved.

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Rationale

I.

1 These administrative proceedings concern the decision of the regulatory authority on the approval of the methodology for the design of the neutrality charge pursuant to section 35e of the German Energy Industry Act (EnWG), with which the applicant's costs related to its activities pursuant to section 35a et seq EnWG are passed on to the balance responsible parties in the market area.

2 The Act amending the Energy Industry Act to introduce storage level requirements for gas storage facilities entered into force on 30 April 2022 (Gas Storage Act; sections 35a to 35g EnWG). This law conferred upon on the applicant tasks relating to its involvement in ensuring the security of gas supply (section 35a EnWG). To ensure security of supply, the law relies on a combination of storage level requirements and a provision mechanism for unused capacity (section 35b EnWG) as well as the tendering of Strategic Storage-Based Options (SSBOs) for the market-based filling of storage capacity. The operators of gas storage facilities (storage system operators) active in Germany must ensure and monitor compliance with the storage level requirements.

3 Natural gas storage facilities are filled in three stages as explained below. In stage 1, the storage facilities are filled using market-based activity accompanied by tenders of SSBOs by the market area manager (section 35c(1) EnWG). In stages 2 and 3, the market area manager can undertake further tenders of SSBOs to make up for any emerging difference between the required and actual storage levels and, if neither stage 1 nor stage 2 is sufficient to achieve the storage level, procure physical gas itself and inject it into storage (section 35c(2) EnWG). However, these three stages do not have to be followed rigidly in order, but are to be designed and combined in the interests of security of supply. The decision about the release of gas volumes contracted by the applicant using SSBOs or procured itself is the responsibility of the Federal Ministry for Economic Affairs and Climate Action (BMWK) in agreement with the Bundesnetzagentur, which consult the applicant on the issue (section 35d EnWG).

4 The costs incurred by the applicant in conjunction with its tasks relating to its involvement in ensuring the security of supply are financed via a neutrality charge imposed on the balance responsible parties (section 35e EnWG). The abovementioned provisions will no longer be in force as of 1 April 2025 (section 35g sentence 2 EnWG).

5 The applicant applied to the ruling chamber for approval of the methodology for the neutrality charge pursuant to section 35e EnWG in a letter of 30 May 2022 that presented a concept for the neutrality charge. The ruling chamber confirmed receipt of the application in a letter of the same day.

6 The ruling chamber published the initiation of proceedings including a consultation of market participants with the reference BK7-22-052 in the Official Gazette and on the Bundesnetzagentur website.

7 The regulatory authority of the federal state of North Rhine-Westphalia, the Bundeskartellamt and the Committee of representatives of the federal state regulatory authorities were informed of the opening of proceedings on 1 June 2022.

8 The following associations, stakeholders and companies submitted responses to the consultation: A&B Ausgleichsenergie & Bilanzgruppen-Management AG (A&B), Austrian Gas Grid Management AG (AGGM), Bundesverband der Energie- und Wasserwirtschaft e.V. (BDEW), EFET-Deutschland – Verband Deutscher Energiehändler e.V. (EFET), EnBW Energie Baden-Württemberg AG (EnBW), ENGIE Deutschland AG (ENGIE), GRT Gaz, INES Initiative Energien Speichern e.V. (INES), NET4GAS, s.r.o. (NET4GAS), RWE Supply & Trading GmbH (RWE), Shell Energy Europe Limited (Shell), Uniper Global Commodities SE (Uniper), Verband der Chemischen Industrie e.V. (VCI), Verband der Industriellen Energie- und Kraftwirtschaft (VIK), Vereinigung der Fernleitungsnetzbetreiber Gas e.V. (FNB Gas). The regulatory authorities of Luxembourg (ILR), Belgium (CREG) and France (CRE) also responded to the consultation.

9 The responses of market participants were forwarded to the applicant in emails of 17 June 2022, giving it the opportunity to comment. The applicant took this opportunity in a response dated 28 June 2022.

10 In a letter of 28 June 2022, the applicant also responded to the comments of market participants by adjusting its application of 30 May 2022 and submitting an amended concept for approval. The amended concept contains changes to the apportionment period and removes the application of a liquidity buffer. The ruling chamber confirmed receipt of the amended application to the applicant in a letter of 29 June 2022.

11 The applicant was given the opportunity to state its views on the operative part of the decision in an email of 18 July 2022.

12 The involvement of the Committee, the Bundeskartellamt and the federal state regulatory authorities took place through the submission of the draft decision on 18 July 2022.

13 The Federal Ministry of Finance (BMF) declared its agreement on 27 July 2022 and the BMWK on 28 July 2022.

14 For further details, reference is made to the content of the file.

II.

15 The approval pursuant to operative part 1 was to be issued as applied for. The formal and substantive requirements for approval have been met. The ruling chamber has lawfully exercised its due discretion in the issuing of the approval.

16 The decision is lawful. There is a legal basis for the decision (see 1). The decision is formally and substantively lawful (see 2 and 3).

17 For clarity, the reasons for the decision are preceded by a structural overview:

1 Legal basis

18 The approval of the concept submitted for the methodology of the design of the neutrality charge is based on section 35e sentence 5 half-sentence 1 EnWG in conjunction with section 29(1) EnWG. Pursuant to section 35e sentence 5 half-sentence 1 EnWG, the regulatory authority approves the details [of the neutrality charge] in accordance with section 29(1) EnWG in agreement with the BMWK and the BMF. The approval is solely for the methodology of the design of the neutrality charge and not for its amount. This is made clear by the explanatory notes on the

legislation, according to which "the further details of the design of the neutrality charge... are approved" (Bundestag printed paper 20/1024, page 27). The exact amount of the neutrality charge is calculated by the applicant on the basis of the approved design and is to be published no later than six weeks before the start of the period of validity (Bundestag printed paper 20/1024, page 27).

2 Formal requirements

19 The formal requirements for the granting of this approval have been met. The decision is formally lawful.

2.1 Competence

20 The competence of the Bundesnetzagentur derives from section 54(1) half-sentence 1 EnWG and that of the ruling chamber from section 59(1) sentence 1 EnWG.

2.2 Right to apply

21 The applicant has the right to submit an application as there is a possibility of an infringement of rights in the event that the approval sought is denied. The applicant plans to impose a neutrality charge to pass on the costs it incurs related to its activities pursuant to section 35a et seq EnWG to the balance responsible parties in the market area. It therefore seeks approval of the methodology for the design of this neutrality charge as per section 35e sentence 5 half-sentence 1 EnWG.

2.3 Hearing and consultation

22 Pursuant to section 35e sentence 5 half-sentence 2 EnWG in conjunction with section 67(1) EnWG, in an email of 18 July 2022 the applicant was given the opportunity to state its views on the intended operative part of the decision. It did so in an email of 20 July 2022. It there stated that it had no comments on the intended operative part of the decision.

23 In addition, the ruling chamber carried out a consultation to provide those not party to the proceedings with the opportunity to state their views. Eighteen responses to the consultation were submitted.

2.4 Involvement of other authorities

24 The involvement of other authorities has taken place to the extent required. The regulatory authority of North Rhine-Westphalia was informed of the opening of proceedings on 1 June 2022 in accordance with section 55(1) sentence 2 EnWG; the Bundeskartellamt and the Committee of representatives of the federal state regulatory authorities were also informed. The formal involvement of the Committee pursuant to section 60a(2) EnWG and of the Bundeskartellamt and the federal state regulatory authority of North Rhine-Westphalia pursuant to section 58(1)

sentence 2 EnWG, with the opportunity to comment, took place through the submission of the draft decision on 18 July 2022. No comments were received.

25 On 27 July 2022 and 28 July 2022, the BMF and the BMWK declared their agreement with the draft decision provided to them on 25 July 2022.

3 Substantive requirements of the approval/eligibility for approval

26 The decision is also substantively lawful.

3.1 Approval pursuant to operative part 1.

27 The substantive requirements for the approval of the concept submitted for the methodology for the design of the neutrality charge pursuant to section 35e EnWG as set out in operative part 1 have been met. The requirements of section 35e EnWG are met by the concept submitted, so it is eligible for approval (see 3.1.1). The ruling chamber has also properly exercised its due discretion in the approval decision (see 3.1.2). A time limit had to be put on the approval (see 3.1.3).

3.1.1 Requirements of section 35e EnWG

28 The requirements of section 35e EnWG are met. In particular, the concept submitted for the methodology for the design of the neutrality charge passes on the applicant's costs in a non-discriminatory manner and in a transparent procedure to the balance responsible parties in the market area (section 35e sentence 1 EnWG). The other requirements of section 35e sentences 2 to 4 EnWG are fulfilled as well. Specifically, this includes:

3.1.1.1 Apportionment period/reference period

29 The concept submitted is eligible for approval with respect to the duration of the apportionment periods and of the reference period.

30 Section 35e EnWG does not mention the duration of the apportionment periods or of the reference period. However, the explanatory notes on the legislation state that the further details of the design of the neutrality charge are to be approved by the Bundesnetzagentur. These include, in particular, the system/methodology used to calculate the neutrality charge and also, among other things, its period of validity (Bundestag printed paper 20/1024, page 27).

31 The concept submitted envisages a standard apportionment period of six months from the first time it is imposed on 1 October 2022. There is to be an exception for the first and last apportionment periods, which are to be three months each. The first apportionment period will therefore run from 1 October 2022 to 31 December 2022 and the last apportionment period from 1 January 2025 to 31 March 2025. Originally, the concept submitted envisaged that all apportionment periods were to be three months, but the applicant changed it, as explained above,

in response to the comments of market participants in the course of the consultation (for details, see margin no 33). With regard to the reference period, the applicant forecasts its costs and revenues for each apportionment period not just up to the end of the respective apportionment period but for the whole period up to the expiry of the Gas Storage Act on 31 March 2025, taking account of the current status of the neutrality charge account. If the forecast costs exceed the forecast revenues, the applicant, using a forecast of the amount that can be apportioned, imposes the storage neutrality charge in euros per MWh withdrawn on the balance responsible parties. As justification, the applicant explains in particular that the use of the necessary measures to ensure the storage levels depends on many external factors and the costs and revenues could fluctuate greatly, which increases the uncertainty of the forecasts in line with the duration of the apportionment period. This uncertainty would need to be mitigated by a high risk premium and strong fluctuations in the neutrality charge would also be possible if the risks did not materialise or materialised in another form. Moreover, the neutrality charge pursuant to section 35e EnWG has the notable feature of a legal time limit. All costs and revenues incurred up to 31 March 2025 must be fully equalised with respect to the market at the latest after the settlement of the last month of performance, March 2025, and the neutrality charge account must be settled at zero. An apportionment period lasting, for example, 12 months would therefore be problematic because there would only be two opportunities to adjust the neutrality charge in the specified period. Rather, a shorter apportionment period was necessary, which is why the applicant requested a standard apportionment period of six months. A standard apportionment period of six months would also make it easier for market participants to plan than, for example, an apportionment period of three months as originally envisaged. The applicant gives as the reason for the two three-month apportionment periods from 1 October 2022 to 31 December 2022 and 1 January 2025 to 31 March 2025 that these are necessary owing to the abovementioned uncertainties in the cost forecast. There is a particularly great uncertainty regarding the costs to be actually incurred in the first period as there is no experience from the winter months yet. The three-month apportionment period allows the applicant to react to changes in the overall situation promptly, enabling unexpected events that already occurred in the first apportionment period (ex post) to be taken into account more quickly and findings about the future (ex ante) to be factored into the next calculation of the storage neutrality charge from 1 January 2023. The three-month apportionment period from 1 January 2025 to 31 March 2025 is to support the goal of a balanced neutrality charge account. A shorter apportionment period will lead to greater accuracy in forecasting, so that the storage neutrality charge can be amended again before the expiry of the law to achieve a balanced neutrality charge account. In any case, doing without a liquidity buffer (see 3.1.1.3) means there is no alternative to the two three-month apportionment periods, as the buffer would have served to absorb fluctuations in the financial means of the applicant and great uncertainties in forecasting. As the reference period runs until 31 March 2025, the cost recovery can take place

over a longer period of time. However, unexpected costs could lead to changes in the forecast planning variables, which would mean that the costs to be covered were higher than initially assumed. The shorter the apportionment period, the more flexibility is available to take account of these changes. If the period were longer than six months, by contrast, the reduced flexibility could lead to a jump in the neutrality charge. The standard apportionment periods of six months each can be used in an iterative process to work towards the stated goal of a neutrality charge account of €0 at the end of the period of validity and a stabilisation of the neutrality charge. The neutrality charge forecast is based on a reference period running until 31 March 2025 because of the expiry date of the law, as by this date at the latest all costs and revenues must have been passed on to the market. Balancing the neutrality charge account at the end of every apportionment period, on the other hand, could lead to extreme fluctuations in the amount of the neutrality charge. In the event of a scenario with very high costs, the long reference period would allow the costs to be covered over a longer period of time (long-term goal), with only some of them being covered in the next apportionment period (short-term goal).

32 The ruling chamber considers the applicant's explanations/justification to be logical and therefore holds the view that a standard apportionment period of six months, with exceptionally two three-month periods from 1 October 2022 to 31 March 2022 and from 1 January 2025 to 31 March 2025, and a reference period until 31 March 2025 for the forecast of costs and revenues, to be appropriate and thus eligible for approval. The ruling chamber is aware that the length of six months for the apportionment period is different to the length of the apportionment periods in the balancing and conversion system, which are 12 months. However, the ruling chamber is of the opinion that there are two decisive differences to these systems that need to be taken into consideration. Firstly, the legal provisions of section 35a et seq EnWG are only in force until 31 March 2025 (see section 35g sentence 2 EnWG), so the aim must be to have a neutrality charge account of zero by this time. Secondly, there is not yet any experience with the new system, in particular with regard to the expected costs and revenues related to measures taken by the applicant under section 35c EnWG, so there is great uncertainty as regards forecasts. For this reason, the balancing system originally started with an apportionment period of six months too. The ruling chamber further shares the view of the applicant that large seasonal fluctuations in costs and revenues are to be expected. For example, there could be significant costs running to billions of euros incurred at short notice and for short periods for the applicant's own procurement of gas (stage 3) that might be necessary to meet the storage requirements on the dates laid down in law. The explanatory notes on the legislation work on the basis of liquidity requirements of €15bn in the worst-case scenario (Bundestag printed paper 20/1024, page 6). Whether, and to what extent, the applicant will have to procure gas itself depends on how much the storage facilities can be filled by the market/storage customers themselves in order to meet the storage targets by the legally prescribed dates. The applicant has no influence on this. The ruling chamber

can therefore understand why the applicant needs the ability to react quickly, especially at the beginning where there is not yet any empirical data from the system, so it can respond to such changes in the overall situation promptly. This is why the three-month apportionment period from 1 October 2022 to 31 December 2022 is regarded as appropriate. Otherwise, if there was a longer apportionment period of, for example, 12 months, the applicant would have little opportunity to respond to such changes, given the expiry of the provisions of section 35a et seq EnWG on 31 March 2025. The standard apportionment period of six months means that an iterative process can be used to work towards a neutrality charge account of zero by the expiry of the law on 31 March 2025 and thus takes account of the special time limit on the provisions of section 35a et seq EnWG. In this context, the ruling chamber therefore also considers it appropriate to use a three-month apportionment period from 1 January 2025 to 31 March 2025 since, with the consequent higher forecasting accuracy, the storage neutrality charge can be adjusted once again before the law is no longer in force from 1 April 2025 in order to achieve the stated aim of a balanced apportionment account so that payouts or subsequent claims (for details see 3.1.1.5) can be avoided as far as possible. A longer standard apportionment period than six months, on the other hand, would lead to a situation in which the applicant could not respond quickly to unexpected events and related costs. This would, in the view of the ruling chamber, mean a greater risk of jumps in the neutrality charge and these are to be avoided as all market participants have an interest in a stabilisation of the neutrality charge. Higher risk premiums on the part of the applicant would also be expected or that the applicant would use a liquidity buffer, which it has currently decided to do without, because these costs could only be used after the end of the longer apportionment period for the forecast for the remaining, shorter period up to 31 March 2025, which in turn would likely lead to higher jumps in the neutrality charge. By contrast, the standard apportionment period of six months along with the two three-month apportionment periods from 1 October 2022 to 31 December 2022 and from 1 January 2025 to 31 March 2025 give the applicant the ability to respond promptly and take account of costs for unexpected events in the forecast for the remaining period, which is longer than it would be if the apportionment period was, for example, 12 months. Costs are therefore spread evenly over a longer period up to 31 March 2025 than would be the case if the apportionment period were longer, which in turn leads a stabilisation of the neutrality charge. The ruling chamber thus also understands why the applicant intends to use the entire duration of the law up to 31 March 2025 as the reference period for the forecast. This means that costs and revenues, which, as explained above, may be very high and also subject to seasonal variations, can be spread evenly over a longer period of time, avoiding jumps in the neutrality charge and making it more stable. If the reference period for the forecast of costs and revenues were not the period until 31 March 2025 but rather the end of each apportionment period, on the other hand, large jumps in the neutrality charge between each apportionment period would be expected because, as explained above, there could be

considerable costs incurred at short notice and for short periods, for example for the applicant's own procurement of gas, and these could not be spread evenly over a longer period of time. The ruling chamber is aware that a standard apportionment period of six months, with two three-month apportionment periods at the beginning and end, reduce the ability to plan for the long term among market participants. However, the explanations above show that the combination of a standard apportionment period of six months plus two three-month apportionment periods and the resulting ability on the part of the applicant to react quickly, along with the reference period for the forecast of costs and revenues up to 31 March 2025 will be suitable to avoid jumps in the neutrality charge and stabilise it, which will be to the benefit of all market participants. The ruling chamber also wishes to point out merely as a precaution that it also considers the first imposition of the neutrality charge from 1 October 2022 (the start of the gas year 2022/2023) appropriate, in particular as this means that it starts at the same time as the neutrality charge for balancing and the conversion neutrality charge, which are both also imposed on 1 October at the start of the gas year. Moreover, it must be noted that the approval of the methodology of the neutrality charge naturally has to occur before the first time the neutrality charge is imposed and also that the applicant must be given sufficient time to calculate the exact amount of the neutrality charge on the basis of this approval and the amount of the neutrality charge has to be published in good time before the start of the period of validity, which is ensured by imposing it for the first time from 1 October 2022.

33 During the consultation, there were some comments that an apportionment period of three months was too short (Uniper) and that it could lead to price adjustments for final customers at short intervals (EnBW). Therefore, for the sake of an improved ability to plan, there were some calls for longer apportionment periods of six months (EnBW, VCI, VKI) or 12 months (EnBW, ENGIE, RWE); in some cases, however, only if this was not implemented with a higher liquidity buffer (VCI, VKI). In other cases, however, the short apportionment period was welcomed (FNB Gas) or considered understandable (EFET). It is first necessary to explain that the responses to the consultation referred to the originally submitted concept envisaging an apportionment period of three months in each case. The applicant responded to these concerns by altering its original concept so that the standard apportionment period was six months and there were just two three-month apportionment periods at the beginning and end. The applicant has thus already accommodated the wishes of the market participants. As explained above, the ruling chamber is aware that the lengths of the apportionment periods in the concept submitted reduce the ability of market participants to plan for the long term compared to an apportionment period of 12 months. Nevertheless, the ruling chamber can follow the reasoning of the applicant for the apportionment periods it plans and the resulting ability to react quickly, as seen in the explanations above. It should be highlighted once again that the applicant's need to react quickly is not so much to do with the costs of, for example, the SSBOs (EnBW, ENGIE) – which are already fixed after the tender process, at least with regard to the service fee and the capacity price although not with

regard to the unit prices in the event of activation – but principally to do with the fact that the applicant may incur considerable costs at short notice for its own procurement of gas, upon which it has no influence, so there is a high level of forecasting uncertainty in this regard that the applicant would have to mitigate in the event of longer apportionment periods with higher risk premiums or the application of a liquidity buffer. The high level of uncertainty in forecasting is already evident in the development of the exchange price for gas in recent weeks, which has been characterised by large fluctuations/leaps. The volume-weighted average price of gas on the THE virtual trading point has doubled since calendar week 28 (the beginning of June) alone. There were some price jumps of over 20% from the day before. The ruling chamber thus understands that the applicant needs to be able to react quickly. Therefore, as also explained above, the long reference period for the forecast of costs and revenues up to 31 March 2025 helps to achieve a stabilisation of the neutrality charge despite the intended apportionment periods and this, in the view of the ruling chamber, creates greater planning certainty for all market participants and balances the different interests as called for in the consultation (BDEW). In particular with regard to the neutrality charges for balancing, the ruling chamber has always emphasised how important it considers the stabilisation of the charges and the resulting planning certainty. In the balancing system, large jumps in charges in the past drew heavy criticism from the market. It is therefore surprising and not really understandable that some preferences were expressed in the consultation for large leaps in charges rather than small changes (EnBW). On the contrary, the ruling chamber considers large jumps in charges as something to avoid in the storage neutrality charge, just as with the neutrality charges for balancing.

3.1.1.2 Apportionable amount/settlement of the neutrality charge

34 The concept submitted meets the legal requirements as regards the amount that can be apportioned and the settlement of the neutrality charge and is thus eligible for approval.

35 Pursuant to section 35e sentence 1 EnWG, the costs incurred by the applicant in connection with its tasks to ensure security of supply are passed on to the balance responsible parties in the market area in a non-discriminatory manner and in a transparent procedure. According to the explanatory notes on the legislation, the neutrality charge will be imposed on the volumes physically withdrawn daily from a balancing group at exit points connecting users with either standard load profiles (SLP) or metered load profiles and at cross-border interconnection points/virtual interconnection points (Bundestag printed paper 20/1024, page 26). The neutrality charge is to be settled via the balance responsible parties as this will ensure that it affects all volumes withdrawn equally and the market area manager has the necessary data (Bundestag printed paper 20/1024, page 26). Pursuant to section 35e sentence 4 EnWG, the market area manager is entitled to demand instalments to cover likely costs from the balance responsible parties.

36 Although the wording of section 35e sentence 1 EnWG only states that the costs must be passed on to the balance responsible parties in a non-discriminatory manner without specifying further details, a systematic interpretation using the explanatory notes on section 35e sentence 1 EnWG shows that the law prescribes which volumes physically withdrawn daily from a balancing group the neutrality charge must be imposed on. The explanatory notes on the legislation clearly envisage that the neutrality charge "will be" imposed on the volumes physically withdrawn daily from a balancing group at exit points connecting users with SLPs or metered load profiles and at cross-border interconnection points/virtual interconnection points, so the applicant has no scope for decision-making on this issue. This legal requirement is met by the concept submitted, making it eligible for approval in this regard, as it foresees in line with the law that the neutrality charge will be imposed on the volumes physically withdrawn daily from a balancing group at exit points connecting users with SLPs or metered load profiles and at cross-border interconnection points/virtual interconnection points.

37 Some responses to the consultation argued that imposing the neutrality charge at cross-border interconnection points was not appropriate, especially as it would lead to a double burden for consumers (A&B, CREG, ILR), would not benefit neighbouring member states (GRT Gaz, RWE, CRE) or was in breach of European law (AGGM, EFET, ENGIE, NET4GAS, Shell). However, the inclusion of cross-border interconnection points was also specifically welcomed (Uniper). Regarding the inclusion of cross-border interconnection points in the imposition of the neutrality charge, it must be emphasised once again that the law itself specifies the parties affected by the neutrality charge and this is not a mere "wish" of the legislators (EFET) nor is it "left open" (RWE). The applicant has no scope for decision-making in this regard. On the contrary, if the applicant's concept did not envisage imposing the neutrality charge at cross-border interconnection points it would not even be eligible for approval as it would not then fulfil the legal requirements. There is no doubt that including the cross-border interconnection points in the imposition of the neutrality charge is compatible with European legislation, in the view of the ruling chamber. In particular, the ruling chamber considers this inclusion to be cost-reflective as it will also benefit foreign traders and final customers. Pursuant to section 35d(4) sentence 1 EnWG, the applicant must sell the gas volumes physically procured in accordance with section 35c(2) EnWG at a steady rate from 1 January of a year at the latest until the end of the storage year. The applicant thus sells these volumes freely on the market, which means that not only domestic but also foreign traders can acquire them and transport them across borders to supply their final customers. There is therefore no restriction to domestic traders or final customers, which means that the gas volumes do not only stay in the Federal Republic of Germany and contribute to its security of supply but also to that of neighbouring Member States. Moreover, it should be noted that the applicant can also use the gas volumes as part of its balancing gas use to rectify physical imbalances, which in turn also enables gas volumes to be transported by foreign traders. Even in the case of the release of gas

volumes under section 35d(1) EnWG, the law does not envision any restriction to the extent that the released gas volumes can only serve to supply gas customers in Germany. These released volumes could also be used for transport to adjacent market areas and thus to supply foreign final customers. The concept submitted including the cross-border interconnection points in the imposition of the neutrality charge is thus eligible for approval.

38 The other requirements of section 35e sentence 1 EnWG are also met by the concept submitted. Thus the costs will be passed on to the balance responsible parties in a non-discriminatory manner and the settlement of the neutrality charge with the balance responsible parties will take place on a monthly basis as soon as the final amounts that can be apportioned are available.

39 The applicant's entitlement to impose appropriate instalments also derives directly from the law, see section 35e sentence 4 EnWG. The concept submitted thus envisages that the applicant is entitled to impose appropriate instalments for the neutrality charge on the balance responsible parties and the instalments made are offset against the final settlement of the charges for the respective month of performance. Regardless of the legal requirements, the imposition of an appropriate instalment or the entitlement to do so is understandable to the ruling chamber. Unlike advance payments, instalments are made in return for (partial) services already provided, so the applicant has a legitimate interest in receiving part payments for the neutrality charge before the final data are available to enable a final monthly settlement of the neutrality charge with the balance responsible parties at a later date. This avoids the applicant providing all the funding in advance and bearing the entire insolvency risk itself (see Bundestag printed paper 20/1024, page 27). It should further be noted that instalments are not a method unknown to the market, since the applicant is already entitled to impose appropriate instalments for the neutrality charges for balancing and the conversion neutrality charge (see Cooperation agreement, annex 4, section 32).

40 Further details of the means of settlement, including the instalments, are the subject of contractual agreement between the applicant and the balance responsible party and are dealt with there.

3.1.1.3 Costs and revenues

41 The concept submitted meets the legal requirements as regards the eligible costs and revenues and is thus eligible for approval.

42 Pursuant to section 35e sentence 1 EnWG, the costs incurred by the applicant in connection with its activities in its tasks to ensure security of supply are allocated to the balance responsible parties in the market area in a transparent and non-discriminatory manner. The costs and revenues that are forecast and used to calculate the neutrality charge are balanced as a result of the cost and revenue neutrality and calculated in a way that is transparent and clear for third parties. The cost and revenue items that are the subject of the neutrality charge are not conclusively defined in the

law. Section 35e sentence 2 EnWG highlights in particular costs and revenues incurred in connection with the measures taken under sections 35c and 35d. Pursuant to section 35e sentence 5 EnWG, the Bundesnetzagentur approves further details in agreement with the BMWK and the BMF, including the cost elements that are the subject of the neutrality charge and taken into consideration in the calculation method (Bundestag printed paper 20/1024, page 27).

43 In the concept submitted the applicant shows which cost and revenue items are currently used for the forecast and transparent calculation of the costs. It differentiates between the gas sector cost items, other cost items and revenue items. The gas sector cost items include in particular the costs for the use of the products in stages 1 to 3, including costs for capacity prices incurred by the applicant in the contracting of SSBO products in stages 1 and 2 as well as costs for unit prices incurred if the contracted volumes are activated. Transport costs and costs incurred when booking storage capacity as part of stage 2 (SSBOs in stage 2) and 3 (own procurement and injection into storage) are specified too. Costs incurred if the applicant procures gas volumes itself are included in the costs of stage 3 as well. Surpluses that have to be paid out to the balance responsible parties under certain circumstances (see section 3.1.1.4) are also counted as gas sector cost items for the calculation of the neutrality charge before each period, according to the concept submitted. Among the other cost items are financing costs as well as human and material resources. Offsetting the costs are currently several gas sector revenue items, according to the concept of the applicant, mostly consisting of the revenues that may arise from the use of the products in stages 1 to 3. Revenue is generated in the event of activated SSBO volumes in stages 1 and 2 being sold and volumes procured and injected into storage by the applicant in stage 3 being sold. Moreover, the applicant envisages revenue that may arise from the settlement of the storage charges and any penalties imposed due to non-fulfilment of contractual obligations by market participants.

44 The ruling chamber considers the applicant's method of calculating the costs and revenues forecast and used for the calculation of the neutrality charge and the costs and revenue items currently expected to be understandable and appropriate. The applicant's entitlement to pass on all costs incurred by it in the course of its new tasks to ensure security of supply to balance responsible parties arises from the law, see section 35e sentence 1 EnWG. In addition, the cost items incurred by the applicant in the course of the use of the SSBO products in accordance with sections 35c and 35d EnWG are already highlighted in section 35e sentence 2 of the law. The ruling chamber shares the view of the applicant that it is the costs pursuant to sections 35c and 35d EnWG that are the cost items that will ultimately most influence the amount of the storage neutrality charge. The currently foreseeable gas sector costs for the SSBO products in stages 1 and 2 are composed of a capacity price for the contracted volumes – there is a distinction here between a fixed price for the volumes to which the applicant has access and a service fee for the volume injected into storage to which only the supplier has access – and the unit prices that are

due in the event that the contracted gas volumes are activated. In stage 2, there could also be costs for storage capacity that the applicant might have to book if the capacity provided to it by the storage system operators is not sufficient to meet the storage level requirements. In stage 3, the applicant procures gas itself and injects it into storage, having previously booked capacity if necessary. The procurement prices incurred are highly likely to be the main cost factor in stage 3, while costs for transport capacity may also be incurred in stages 2 and 3. The Bundesnetzagentur views all these gas sector costs as appropriate.

45 The concept originally submitted envisaged that a liquidity buffer would be formed, but the applicant removed it in the amended concept to take account of responses from market participants to the consultation (for details, see margin no 47). As well as the gas sector cost items, there are other cost items listed by the applicant to be regarded as costs incurred in the course of measures to ensure security of supply, especially relating to human and material resources and financing. As far as the financing costs are concerned, it must be added that although the costs for the measures to ensure security of supply are covered by the neutrality charge, this will only be imposed for the first time in October and thus will only generate revenue for the applicant with a time lag of several weeks. In particular, costs for SSBO products in accordance with sections 35c and 35d EnWG in the form of capacity prices and, where necessary, the procurement of gas volumes by the market area managers, mean that there is a need for liquidity at an early stage even before the neutrality charge is imposed. Revenues from any sales of gas volumes can only be generated in the last weeks of this calendar year, too, so the applicant has to pre-finance those costs using other financial instruments. The cost of interest and provision fees incurred, among other things, are to be regarded as part of the financing costs relating to the measures to ensure security of supply. The ruling chamber is of the opinion that these cost items, transparently presented by the applicant, are also appropriate. It wishes to make clear that further cost items that cannot be predicted at this time are also part of the methodology for the calculation of the storage neutrality charge and thus also covered by the approval provided they are appropriate and serve the tasks to ensure security of supply. That is to say, the list provided in the concept is not to be regarded as exhaustive.

46 The concept submitted also meets the requirement of section 35e sentence 3 EnWG, in the view of the ruling chamber. The concept submitted envisages revenue neutrality and offsets the costs items against the relevant revenue items, in particular those already mentioned above. Costs and revenues are thus balanced against each other so that measures to ensure security of supply do not represent a source of income for the applicant and ultimately only the costs actually incurred are reimbursed (Bundestag printed paper 20/1024, page 28). Accordingly, as for the cost items, further revenue items that cannot yet be predicted and are not currently mentioned in the concept submitted are also to be taken into consideration in the calculation methodology of the storage neutrality charge and thus covered by the approval provided they are appropriate and represent

revenues related to the tasks to ensure security of supply. The list provided in the concept is thus not to be regarded as exhaustive in this respect either.

47 Some of the responses to the consultation called into question the usefulness of the liquidity buffer envisaged by the applicant in the concept it originally submitted. Although there was some positive feedback for the liquidity buffer (FNB Gas), the primary opinion was that it would push up the neutrality charge, and thus also the gas price, even further and be an additional burden on final customers (BDEW, RWE, Shell). The applicant's liquidity is secured in particular by the state-secured loans (BDEW, RWE) and other financial instruments such as the possibility of payment by instalments (Uniper), so the liquidity buffer is not necessary, it was argued. Moreover, it was pointed out during the consultation with reference to the short apportionment period of three or six months that the applicant already had the opportunity to react to developments in volumes and prices on the gas market (Shell). In a few cases, reference was made to experiences with a liquidity buffer in other areas, such as the balancing system, and it was put forward that the liquidity buffer had not necessary stabilised the neutrality charge in the past but had in fact actually led to a fluctuation in its amount (EFET, Shell). Moreover, the necessity and resulting complexity of a retroactive, cost-reflective payout of the liquidity buffer at the end of the reference period was pointed out (BDEW, Uniper). Using the buffer in the last period to reduce the amount of the neutrality charge was something to avoid, according to Uniper.

48 As stated above, following the critical feedback from the market, the applicant adjusted its original concept and decided not to form a liquidity buffer. The ruling chamber welcomes the amendment carried out by the applicant. In particular given the granting of state-secured loans to pre-finance the measures and the short apportionment periods of six months as standard, or three months in the two periods from 1 October 2022 to 31 December 2022 and from 1 January 2025 to 31 March 2025, the applicant has funds that are sufficiently liquid and is in addition able to reduce market risks and make corresponding adjustments to price and volume forecasts at short intervals. It is therefore not absolutely necessary to have pre-financing from final customers in the form of a liquidity buffer. Moreover, at the time of the first calculation of the neutrality charge, at least the actual fixed costs for the tendered SSBO products from May and June 2022 and some of the procurement costs for gas volumes for the SSBOs in stage 3 will already be known. In the following apportionment periods starting on 1 January and 1 July the applicant will also know further actual costs for meeting the storage level requirements in October and November and income from the revenue items generated in spring.

49 As well as criticism of the liquidity buffer, there was also some isolated criticism that it was not possible to follow the calculation of the costs (A&B). The ruling chamber wishes to draw attention here to the cost and revenue items provided by the applicant. Moreover, the applicant intends to publish the monthly balance of all cost and revenue items in a transparent manner (see

section 3.1.1.7). The ruling chamber therefore considers it superfluous to have a second neutrality charge account solely for the management of the filling level (A&B). For one thing, as has been stated, the applicant intends to publish the costs and revenues transparently. For another, all costs and revenues incurred in connection with the tasks for ensuring security of supply flow into the neutrality charge.

3.1.1.4 Handling of surpluses

50 The concept submitted is eligible for approval as regards its handling of surpluses in the neutrality charge account.

51 Section 35e EnWG does not contain any direct specifications as to how surpluses in the neutrality charge account should be dealt with, but sentence 3 of section 35e EnWG states that costs and revenues must be balanced against each other. The explanatory notes on the legislation make clear that the intention in balancing the costs and revenues is to ensure that balance responsible parties share in the revenues made by the applicant in the same way as in costs. It is also explained that the settlement of the applicant's measures relating to its involvement in security of supply should not affect its net income, which means that the applicant should be reimbursed for the costs it has actually incurred, but the settlement of the measures should not represent a source of income for the applicant (Bundestag printed paper 20/1024, page 27). Moreover, section 35e sentence 5 EnWG sets out that the further details of the design of the neutrality charge are to be approved by the Bundesnetzagentur. These include questions about how to deal with surpluses (payout) and losses, according to the explanatory notes (Bundestag printed paper 20/1024, page 27).

52 The applicant's concept envisages that a payout of surpluses may be made under certain circumstances. This would be the case if the aim of an account balance of €0 on 1 April 2025, taking account of all forecast costs and revenues up to then, could still be achieved with a payout. The applicant only considers a payout reasonable if it is not necessarily associated with a neutrality charge amount of €0 in the following apportionment period. As justification for this, the applicant explains that even in the years following winter 2022/2023, in which it is assumed the highest cost burden will occur, uncertainty about the likelihood of measures occurring and the resulting cost burdens will remain. The proposed method is therefore logical, according to the applicant, as the payout will only take place if the goal of achieving a neutrality charge account of zero on 1 April 2025 is not jeopardised by the payout. The payout is thus the result of the forecast of the long-term goal including the subsequent periods and is not only based on the next period. Moreover, it could be necessary to impose a storage neutrality charge and thus ensure a certain inflow of liquidity despite a payout if the future need for the applicant to carry out statutory measures cannot be forecast with enough certainty. The applicant states that a payout to all balance responsible parties according to the ratio that they have so far paid into the system would

be preferable to the possible alternative of reducing the neutrality charge by taking account of the payout sum in the subsequent period. The payout would be particularly useful in the light of cost-reflectivity as it would return funds to all that had previously paid into the system. This aspect would not be taken into consideration if the neutrality charge for the subsequent period was reduced. In the applicant's concept, the payout would be published and carried out no later than six weeks before the next apportionment period, as soon as all final amounts relevant for the settlement for the month of performance directly before the start of the subsequent period were available. The payout sum will be distributed pro rata among all balance responsible parties that have a valid balancing group contract with the applicant at the time of the decision on a payout. For each balance responsible party, the neutrality charge amounts paid since the start of the first apportionment period from the entry into force of the Gas Storage Act, less any past payouts, will be calculated as a proportion of the total sum to be paid out. The payout per balance responsible party will be limited to the amount of the charges paid by that party. In justification of this, the applicant explains that focusing on the amounts paid means that each balance responsible party is considered according to its actual cost burden. Focusing on the amounts subject to the neutrality charge, on the other hand, could lead to a distortion between the payments of the balance responsible party made so far and its share in the payout, especially if there are periods in which the charges are different but the amounts subject to neutrality charge are similarly high.

53 The ruling chamber is able to follow the explanations of the applicant relating to its handling of surpluses on the neutrality charge account and thus the payout methodology described in the concept is eligible for approval. The basic premise that a payout can only be made if the aim of a balanced account on 1 April 2025, taking account of all forecast costs and revenues up to then, will still be achieved even with a payout is appropriate. Owing to the time limit on the period of validity of the legal provisions and thus on the neutrality charge itself, focusing on the end date as the relevant one for determining a potential surplus makes sense. Correspondingly, the whole period of validity is used for the calculation of the neutrality charge and not just the subsequent apportionment period. Otherwise, particularly if the apportionment period is relatively short, this could lead to the amount of the neutrality charge often changing a lot with corresponding payouts that would then have to be recouped with a much higher neutrality charge in the following apportionment period. Using 1 April 2025 as the relevant date for the determining of any surplus and making a decision on a payout thus fits in with the overall methodology and contributes to a stabilisation of the neutrality charge. For the same reason, the ruling chamber also understands why a payout does not necessarily have to be associated with a neutrality charge amount of €0 in the following apportionment period. Rather, the decisive point is that a balanced neutrality charge account can be achieved on 1 April 2025 in the applicant's forecasts despite the payout. The applicant's argument that a certain inflow of liquidity in the form of the neutrality charge can be necessary to mitigate the uncertainty associated with the forecasts as to the measures to be taken

in future and the resulting costs is convincing. However, if, taking account of the various uncertainties of the measures to be carried out by the applicant in accordance with sections 35a to d EnWG and potential payouts, the forecasts still indicate with sufficient likelihood a balanced neutrality charge account on 1 April 2025, the payout can of course also be associated with a reduction of the neutrality charge to zero. For the reasons given above, however, it is appropriate that the payout does not necessarily have to be associated with a reduction of the neutrality charge to zero. The ruling chamber also understands why the applicant prefers a payout based on the sums paid in by the balance responsible parties in the previous apportionment periods to a reduction of the neutrality charge for the future. The argument made by the applicant about cost-reflectivity is convincing here. The ruling chamber also sees an advantage in the payout as opposed to a reduction in the neutrality charge up to the introduction of a negative neutrality charge for future apportionment periods in that the outflow of liquidity in the event of a payout will be clearly limited to the payout amount. This can make it easier for the applicant to plan for the final balance on 1 April 2025, whereas uncertainty would remain in the event of a reduction in the neutrality charge or a negative neutrality charge, because the amounts that can be apportioned are not known in advance. A reduction in the neutrality charge could therefore lead to a much greater outflow of liquidity than intended, which could then result in a larger neutrality charge in the subsequent period and would not be in line with the aim of stabilising the neutrality charge.

54 As the payout sum per balance responsible party will be calculated according to the charges paid in since the start of the first apportionment period (less any payouts received in the past), the actual cost burden of the balance responsible party will be taken into account. The limiting of the payout per balance responsible party to the amount of payments made by it is thus appropriate. The alternative calculation of the payout per balance responsible party using the amount subject to the neutrality charge has been rejected by the applicant on the basis that it would not be true to the principle of cost-reflexivity. In fact, the payout could then be in a distorted relationship to the neutrality charge payments made by the balance responsible party so far. The ruling chamber is in agreement with the line of argumentation presented by the applicant and also recognises the risk of a certain distortion in cases in which there are periods with different neutrality charge amounts but similar amounts subject to the neutrality charge. There is no objection to the publication of a payout no later than six weeks before the start of the next apportionment period and this corresponds to the legal requirements for the publication of the neutrality charge for the next apportionment period. It also makes sense to make the payout once all data relevant for the settlement for the month of performance directly before the start of the subsequent period are available. This ensures that all sums paid for the neutrality charge by the balance responsible parties can be taken into consideration on the basis of the relevant amounts, which takes account of the principle of cost-reflectivity of the payout mechanism.

55 There were only isolated mentions of the handling of potential surpluses on the neutrality charge account by respondents to the consultation. These pointed out that the execution of a payout could be associated with difficulties in the internal relationship between the balance responsible party and the supplier/shipper and bilateral arrangements would have to be made on the issue (EFET). Payouts should be avoided as far as possible and should be the last resort (BDEW). However, it was also stated that a high fluctuation of the neutrality charge should be avoided (BDEW, FNB Gas), and, in the view of the ruling chamber, payouts under the precondition discussed above can contribute to this. It was further proposed that payouts should also be made to those balance responsible parties that had paid the neutrality charge in the previous apportionment periods but had already given up their balancing group responsibility at the time the decision was made on the payout (VIK, VCI). It is certainly conceivable to design the payout mechanism in this way, but the ruling chamber considers that there are important reasons to keep the handling of surpluses as proposed by the applicant. For one thing, the applicant does not impose any charges on the balance responsible parties for the management of a balancing group that does not need to be actively managed. For another, the period of validity for the legal provisions under discussion here is limited to 31 March 2025. The relevant period in which a balancing group needs to be managed in order to participate in any payouts connected to the storage neutrality charge is therefore not excessively long and is foreseeable for all balance responsible parties. A payout of surpluses to former balance responsible parties, with which the applicant may not have had any business relationship for a longer period of time at the time of the payout, would represent a disproportionate amount of effort for the applicant. Therefore, having weighed up the arguments, the ruling chamber does not consider it necessary to change the concept submitted by the applicant with regard to the handling of surpluses.

3.1.1.5 Settling the neutrality charge account at the end of the period

56 The concept submitted is eligible for approval as regards the method it describes for settling the neutrality charge account at the end of the period in force of the Gas Storage Act on 31 March 2025.

57 Section 35e EnWG does not contain any direct specifications as to how the neutrality charge account should be settled at the end of the period in force of the Gas Storage Act, but sentence 5 of section 35e EnWG sets out that the further details of the design of the neutrality charge are to be approved by the Bundesnetzagentur. The explanatory notes to the legislation specify some relevant details to be approved, although these are not exhaustive, including issues of the net income not being affected, which can also include the settlement at the end of the period in force (Bundestag printed paper 20/1024, page 27).

58 The applicant states in its concept that the limited validity of the law means that all costs and revenues remaining in the neutrality charge account at the end of the period in force and allocated

to the period of validity must be passed on to the market. It may be assumed, according to the applicant, that the neutrality charge account will have a positive or negative balance at the end of the last apportionment period, as the neutrality charge for the last period is also based on a forecast. The applicant must be able to settle all costs or revenues remaining at the end with the market so that the neutrality charge account does not contain any open items after the law is no longer in force. The concept envisages that the final payout or settlement will occur with those balance responsible parties that have concluded a valid balancing group contract with the applicant on 31 March 2025. This will ensure that no settlement or payout is made with insolvent or no longer active balance responsible parties. According to the concept submitted, in the settlement the total amounts that can be apportioned that have been incurred since the start of the first apportionment period for each balance responsible party will be calculated as a ratio of the total amounts that can be apportioned in the market area that have been incurred during the same period. As justification for the choice of this neutrality charge ratio, the applicant explains that the settlement of the neutrality charge in the whole period would always be carried out on the basis of the amounts that can be apportioned and that these will therefore be used as the basis for the settlement at the end of the period in force as well. In the event of a final payout, by contrast, the payments made since the start of the first apportionment period would be used for each balance responsible party. This sum, less any payouts already made, will be calculated as a ratio of the total sum to be paid out. A positive balance on the neutrality charge account would be paid out to balance responsible parties using this ratio. As justification for the payout ratio, the applicant explains that potential payouts during the period of validity of the law would also be based on the neutrality charge payments made. The payout per balance responsible party is to be limited to the amount of payments made by it in the course of the neutrality charge settlement. Moreover, the concept envisages that in the event of a payout at the end of the period of validity, initially only a part of the remaining surplus is to be paid out. As justification for this measure, the applicant explains that any disputed or other justified claims on the applicant that only arise after 1 April 2025 can be met from the remaining funds of the neutrality charge account. If a full payout was made immediately after 1 April 2025, on the other hand, the applicant would have no funds remaining to settle any later claims. The partial payout is to be made as soon as all data relevant for the settlement are available and its amount is to be determined in accordance with the principles of due diligence. Further details of the full payout of the neutrality charge account are dealt with in the contractual provisions between the applicant and the balance responsible parties.

59 In the view of the ruling chamber, the applicant's explanations related to the settlement of the neutrality charge account after the end of the period of validity of the law are understandable and the methodology for settlement and payout described in the concept is eligible for approval.

60 It must first be noted that the limited period in force of the law, and thus also of this approval, makes it necessary to make arrangements for the settlement of the neutrality charge account at

the end of this time. It would otherwise not be possible to ensure that the principle of the applicant's net income not being affected by its carrying out measures related to its involvement in security of supply could be upheld. The applicant's argument that the neutrality charge account is likely to have a positive or negative balance at the end of the period in force of the law is evident here. The last opportunity to change the account balance occurs with the neutrality charge for the last period. Even with a relatively short apportionment period of three months, it cannot be assumed that the forecasts used to calculate the neutrality charge will lead to a completely balanced neutrality charge account. The final apportionment period can at most help to ensure that the final balance is as small as possible. It is therefore evident that the neutrality charge account has to be finally settled.

61 The ratios proposed by the applicant according to which a settlement or payout is to be made at the end of the period of validity are appropriate. In both cases, the applicant bases its proposal on the procedure that is also to be used during the period in which the neutrality charge is to be imposed. It is therefore logical that it would use as a basis the amounts that can be apportioned or, in the case of a payout, the sums paid in and this corresponds to the general logic of the calculation of the neutrality charge. The same applies to the limiting of the payout per balance responsible party to the payments made by it. It is equally logical that the final settlement of the neutrality charge account is to occur with those balance responsible parties that have concluded a valid balancing group contract with the applicant on 31 March 2025. In the event that the neutrality charge account has a surplus at the end of the period of validity, part of this surplus is to be paid out initially and a certain sum held back. As justification, the applicant explains that justified claims on the applicant may still arise after 1 April 2025 that could then be met from the withheld surplus. The applicant states that it does not have any alternative funding opportunities to meet any such claims. The ruling chamber is in agreement with the procedure described in the concept. The applicant does not have any alternative funding opportunities for claims against it relating to its tasks pursuant to section 35a et seq EnWG and referring to the period before 1 April 2025 but only arising after 1 April 2025. In particular, the applicant cannot use funds available to it to fulfil its duties as market area manager to procure balancing energy and manage the balancing group to meet claims related to the Gas Storage Act, as, in accordance with the GaBi Gas 2.0 determination, these may only be used for the purposes given in that determination. The partial payout, that is to say, the partial withholding of the surplus, ensures that the applicant can still meet justified claims after 1 April 2025. The partial payout is to be made as soon as all data relevant for the settlement are available. The amount of the partial payout is to be determined appropriately and according to the principles of due diligence. As soon as there are no more open claims on the applicant, at the latest, any remaining surplus is to be paid out to the balance responsible parties in accordance with the methodology described above. Further details of the

full payout of the neutrality charge account are dealt with in the contractual provisions between the applicant and the balance responsible parties.

62 There was a critical reaction to the resettlement of the neutrality charge account in one response to the consultation. There should be no resettlements or corrections; instead, the differences should be balanced out with the neutrality charge for the following period, according to ENGIE. The ruling chamber is unable to follow this perspective. This approval and the neutrality charge itself both have a period of validity clearly set out in advance by law. It is therefore only possible to impose the storage neutrality charge until 31 March 2025. The methodology does not therefore envisage balancing any surpluses or incorrect amounts in the subsequent period after 31 March 2025. Given the reference period for the neutrality charge calculation (see section 3.1.1.1), which covers the whole period of validity from 1 October 2022 to 31 March 2025 and is supposed to help ensure a stabilisation of the neutrality charge, among other things, the ruling chamber does not consider it opportune to look at the differences on the neutrality charge account from apportionment period to apportionment period within the period of validity. Some respondents expressly welcomed the use of the payments made since the start of the apportionment period, and not the amounts that can be apportioned, being used for the settlement of the neutrality charge account at the end of the period of validity in the event of a payout for each balance responsible party (Uniper). One participation was able to follow why a payout or subsequent claim should be made to all that have paid into the system thus far (EFET). Some respondents pointed out that there could be difficulties in passing on subsequent claims or payouts in the internal relationship of balance responsible parties, suppliers/shippers and final customers or could require additional effort, particularly if the contractual relationship had already come to an end by then (EFET, ENGIE, VCI, VIK). There were also calls for the applicant to make payouts or subsequent claims to companies with which it did not have a contractual relationship but that were still in existence as companies (EFET, VCI, VIK). The ruling chamber is aware that it might not be easy to pass on payouts or subsequent claims in the internal relationship of several companies, in particular if certain contractual relationships no longer exist at the relevant time. As explained in section 3.1.1.4, the ruling chamber regards the effort required for a balance responsible party to continue to manage an existing balancing group for a foreseeable amount of time (until 31 March 2025) as acceptable, particularly as the applicant does not impose any separate charges for merely managing the balancing group. The ruling chamber considers it a disproportionate amount of effort for the applicant to settle the account with companies that might have been balance responsible parties years before but now have no business or contractual relationship with the applicant at all. One response to the consultation suggests that the details of a full payout be described in the concept, particularly as regards the naming of a final date by which the final settlement should be made (EFET). The ruling chamber can understand the wish to know the final date for the final payout of the neutrality charge account when the concept is

presented. However, the details of the full payout of the neutrality charge account are dealt with in the contractual provisions between the applicant and the balance responsible parties. Therefore the setting of the final date on which a full payout of the neutrality charge account can occur is not the subject of this decision. Moreover, a key prerequisite for the payout of the remaining surplus is that there are no more open claims on the applicant and this date cannot be simply determined in advance, neither by the applicant nor by the ruling chamber. The ruling chamber therefore considers the procedure described in the concept by the applicant to be appropriate, but stresses that the partial sum not paid out once all data relevant to the settlement are available must be determined appropriately and paid out to the balance responsible parties without delay as soon as there are no more open claims on the applicant.

3.1.1.6 Handling of subsequent claims/liabilities after the end of the period of validity

63 The concept submitted is eligible for approval as regards the procedure described for handling subsequent claims and liabilities of the applicant against the balance responsible parties.

64 Section 35e EnWG does not contain any direct specifications as to how subsequent claims or liabilities of the applicant against the balance responsible parties are to be dealt with after the end of the period of validity on 1 April 2025. However, section 35e sentence 5 EnWG sets out that the further details of the design of the neutrality charge are to be approved by the Bundesnetzagentur. The explanatory notes to the legislation specify some relevant details to be approved, although these are not exhaustive, including issues of the net income not being affected, which can also include the handling of subsequent claims and liabilities after the end of the period of validity of the neutrality charge (Bundestag printed paper 20/1024, page 27).

65 In its concept, the applicant provides several reasons that could justify a subsequent claim or liability against individual balance responsible parties. For example, there could be claims on the balance responsible parties arising from the time up to 31 March 2025, or subsequent corrections could make it necessary to correct invoices. Cost or revenue items could also arise after 31 March 2025 that would have to be distributed among all balance responsible parties. As an example of these, the applicant gives its financing costs, the exact amount of which will only be known after 31 March 2025. To ensure that such matters can be settled via the neutrality charge account, a period of time for subsequent claims is to be introduced in which the applicant can request from or pay out to balance responsible parties any claims or liabilities arising from the period before 1 April 2025. A subsequent claims period may also be necessary in the event that considerable, unforeseen costs arise during the last winter in which the legal provisions are applicable (2024/2025), as this would lead to a very high final invoice for the market. However, the return of funds to the balance responsible parties via the suppliers can only take place with a significant delay, as the costs of the suppliers are passed on to final consumers. The introduction of a subsequent claims period means that payments due to the applicant can be spread equally

over this period. The details of the distribution of the final invoice in this period are to be set out in the contractual arrangements.

66 In the view of the ruling chamber, the applicant's explanations related to the handling of subsequent claims and liabilities after the end of the period of validity are understandable and thus eligible for approval.

67 The cases given by the applicant in the concept as examples in which subsequent claims or liabilities of the applicant against the balance responsible parties may occur are realistic and sufficiently likely. The ruling chamber therefore considers it appropriate to introduce a subsequent claims period. It would be necessary if claims or liabilities of the applicant against the balance responsible parties are only formalised after 31 March 2025, as in the case of corrected invoices or cost and revenue items that can only be identified subsequently. In addition, the ruling chamber considers the introduction of a subsequent claims period appropriate in the event that unforeseen, very high costs would have to be passed on to the balance responsible parties with the final invoice at the end of the period of validity of the law on 31 March 2025. Without a subsequent claims period enabling the applicant's costs to be settled evenly by balance responsible parties beyond this time, any costs due would have to be invoiced immediately using exact billing, which could lead to a huge financial burden on individual balance responsible parties. In particular given the fact that the balance responsible parties would pass on these costs (possibly via suppliers) to final consumers and the flow of funds back to balance responsible parties would therefore not occur via a one-off payment soon after 1 April 2025, it seems appropriate to introduce a subsequent claims period.

68 The procedure for handling subsequent claims and liabilities proposed by the applicant in the concept and the general necessity of a subsequent claims period were not called into question by respondents to the consultation. One respondent welcomed the procedure presented in the concept and emphasised the need for a subsequent claims period (FNB Gas). Several others remarked that the subsequent claims period should be explicitly defined and kept as short as possible (BDEW, EnBW, Uniper). Suggestions for the length of the subsequent claims period were until 31 October 2025 or 31 December 2025 (BDEW, EnBW) or a period of no more than a year (Uniper). The respondents argued that the subsequent claims period should be as short as possible because if it dragged on too long, the parties affected by the subsequent claims or liabilities, ie the active market participants, would increasingly start to differ from the group of balance responsible parties active during the period of validity owing to balancing group terminations and/or insolvencies (BDEW, EnBW). One respondent further proposed a de minimis threshold for subsequent claims and liabilities, so that it would not be necessary to reopen an account for the sake of very small sums (Uniper). The ruling chamber first wishes to point out that the details of the subsequent claims period and the potential distribution of the final invoice are

dealt with in the contractual agreements with the balance responsible parties. Such details include determining the length of the subsequent claims period, which does not form the subject of the approval in these proceedings. However, the ruling chamber does find the arguments made in the responses about the determination of the subsequent claims period convincing. A period that was too long would contravene the principle of cost-reflexivity and would obviously not be in the interests of the market. It would also not be in the interest of the applicant, the ruling chamber considers. The ruling chamber thus encourages the applicant to take appropriate account of the suggestions made by respondents to the consultation when it works out the details in the course of drawing up its contracts.

3.1.1.7 Transparency/publications

69 The concept submitted meets the legal requirements as regards transparency for market participants and is thus eligible for approval.

70 Pursuant to section 35e sentence 1 EnWG, the costs incurred by the applicant in connection with its tasks to ensure security of supply are passed on to the balance responsible parties in the market area in a non-discriminatory manner and in a transparent procedure. To this end, pursuant to section 35e sentence 2 EnWG, the applicant must calculate the costs and revenues incurred in the course of the measures taken, in particular in accordance with sections 35c and 35d, in a way that is transparent and clear for third parties. In the first step, the applicant must forecast the costs and in the second step calculate the costs actually incurred in a way that is understandable for an expert third party (Bundestag printed paper 20/1024, page 26). Moreover, in accordance with the principle of transparency, the neutrality charge and any decision on the possible payout must be published in good time, no later than six weeks before the start of the respective period of validity, including in particular the relevant basis and system for the calculation of the forecast for the neutrality charge and the methodology for any payout (Bundestag printed paper 20/1024, page 26).

71 The concept submitted envisages that the applicant will publish information on its website in a format that is suitable for processing electronically using standard software. The following items are to be published: the storage neutrality charge and the decision on any payout six weeks before the start of the respective apportionment period as well as the basis and system for the calculation of the forecast for the neutrality charge and the methodology for determining any payout. The monthly balance of the neutrality charge account (costs and revenue items) is also to be published as soon as the final figures needed for the publication of a settlement month are available.

72 In the view of the ruling chamber, the content that the applicant intends to publish according to its concept fulfils the legal transparency requirements and is thus a central prerequisite for an efficient and functioning storage neutrality charge system. Market participants need this information to recognise and evaluate any economic risks and if necessary to adjust their market behaviour

accordingly. The transparency achieved by providing this information will strengthen confidence in the functioning of the storage neutrality charge system. The ruling chamber considers that as regards the gas sector cost items, the applicant's publications must include the costs for the use of the products in stage 1 (SSBOs), 2 (SSBOs of stage 2) and 3 (capacity bookings, gas procurement), in particular costs for capacity and unit prices, transport costs, storage fees and costs for the procurement of gas volumes as well as information about the payout of surpluses. On the revenue side, the revenues from the settlement of the storage neutrality charge, from the sale of activated SSBO volumes, from the sale of volumes injected into storage in stage 3, from penalties imposed due to non-fulfilment of contractual obligations and other revenues allocated to the neutrality charge account are to be published. To ensure the highest degree of transparency possible, it is necessary to provide the information to be published and regularly updated to all market participants promptly, to an appropriate extent and in a non-discriminatory manner, which is ensured by the concept submitted. The information will be published on the applicant's website in a format that is suitable for processing electronically using standard software so that it can be evaluated automatically. This will enable market participants to access the published information quickly, evaluate it efficiently and use it as a basis for their market activities.

73 Some respondents to the consultation objected that the notice period of six weeks was too short and not enough to implement price adjustments before the deadline (BDEW and EnBW). They called for consideration of an announcement earlier than six weeks (Uniper) and of eight to ten weeks (EnBW and BDEW). In this context, it was also pointed out that as cross-border interconnection points are included in the storage neutrality charge, where possible all costs relating to a transport booking should already be fixed at the time of the booking for cross-border trade (EFET). This was reiterated in another response, which also specified that the publication should take place no later than five days before the quarterly auction or, if the neutrality charge was to be set annually, the annual auction (RWE). However, one response was also received welcoming the setting of a short notice period on the grounds that it enabled short-term reactions (FNB Gas). This argued that with a longer notice period, the forecasting quality for the storage neutrality charge would be poorer and there would probably be a risk premium to minimise financial liquidity risks with the result that the neutrality charge would likely develop in a more volatile way. The ruling chamber acknowledges, on the one hand, the conflict of aims between the market participants' need to respond and plan ahead with an even earlier announcement than six weeks ahead and the applicant's need to calculate the neutrality charge on a firm basis. However, it must first be highlighted that the notice period of six weeks is in line with the legal requirement "in good time, no later than six weeks before the start of the respective period of validity" (Bundestag printed paper 20/1024, page 26). The ruling chamber otherwise considers the envisaged lead time for the announcement of the storage neutrality charge and the decision on any payout of six weeks before the start of the respective period of validity to be an appropriate

time, despite the criticism expressed in some responses. Six weeks is regarded as an appropriate amount of time to enable the market to plan and respond. The ruling chamber considers that a lead time of six weeks gives the applicant the opportunity to take appropriate account of current developments in its forecast while also giving market participants sufficient time to factor the amount of the future neutrality charge and any payout into their planning. Moreover, the period of six weeks has already been proven and established by market area managers for the neutrality charge for balancing and the conversion neutrality charge for years. The change to the apportionment period from originally three months to six months with two three-month periods at the beginning and end is also likely to increase planning certainty for market participants as the number of times the neutrality charge has to be calculated is reduced.

3.1.2 Discretion for the approval lawfully exercised

74 In issuing the approval, the ruling chamber exercised its due discretion lawfully. It was not necessary to impose changes or conditions on the concept submitted as it fully met the legal requirements (see 3.1.1).

3.1.3 Consequences of the approval/time limit

75 The approval under operative part 1 is to be limited until 31 March 2025 as, pursuant to section 35g sentence 2 EnWG, the legal provisions on the introduction of storage level requirements for gas storage facilities will no longer be in force as of 1 April 2025. Until this time, the approval will enable continuity and transparency as regards the framework conditions for the design of the neutrality charge pursuant to section 35e EnWG.

76 Purely as a precaution, the ruling chamber wishes to point out that if the applicant intends to make major changes to the approved concept, it needs to make a new application to do so. This does not apply to purely editorial changes to the concept submitted.

4 Costs pursuant to operative part 2

77 Regarding costs, a separate notice will be issued as provided for by section 91 EnWG.

Information on legal remedies

Appeals against this decision may be brought within one month of its service. Appeals should be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn. It is sufficient if the appeal is received by the Higher Regional Court of Düsseldorf within the time limit specified (address: Cecilienallee 3, 40474 Düsseldorf)

The appeal must be accompanied by a written statement setting out the grounds for appeal. The written statement must be provided within one month. The one-month period begins with the filing of the appeal; this deadline may be extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal does not have suspensory effect (section 76(1) EnWG).

Diana Harlinghausen	Dr Antje Peters	Dr Werner Schaller
Vice Chair acting as Chair	Vice Chair	Vice Chair